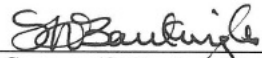




SO ORDERED.

SIGNED this 30th day of March, 2018

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.**


Suzanne H. Bauknight
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

CHARLES D. CROWE
EDWENA L. CROWE

Case No. 3:17-bk-32042-SHB
Chapter 7

Debtors

AMENDED ORDER

On December 5, 2017, the United States of America, on behalf of its agency, the Small Business Administration (“the SBA”), filed its Objection to Claim 7-1 Filed by Chiquita Young (“Objection to Claim”) [Doc. 38], after which creditor Chiquita Young (“Ms. Young”) filed her Response to Objection to Claim [Doc. 44] on January 9, 2018. A preliminary hearing was held January 11, 2018, at which the parties advised the Court that the matter could be decided without an evidentiary hearing, and the Court set a briefing schedule in an Order entered on January 11, 2018 [Doc. 49]. Pursuant to the January 11 Order, the parties filed a Joint Stipulation of Facts on February 8, 2018 [Doc. 55], and their briefs on February 23, 2018 [Docs. 56, 57].

In her brief, Ms. Young raised two procedural issues: standing and posture, arguing that the SBA did not have standing to object to her claim¹ and, more significantly, that subordination of claims require the filing of an adversary proceeding. After obtaining leave from the Court to do so, the SBA filed a response to Ms. Young's brief on March 8, 2016 [Doc. 64], arguing that it has standing to object to Ms. Young's claim and that the objection was sufficient to bring the matter before the Court because (1) Rule 7001(8), which requires that an adversary proceeding be filed "to subordinate any allowed claim or interest, except when a . . . plan provides for subordination" only applies to equitable subordination under 11 U.S.C. § 510(c) and does not apply to actions under subsection (a); and (2) "even if an adversary proceeding was required, that requirement is not absolute." [Doc. 64 at 3.] The SBA's position, however, does not comport with this Court's consistent requirement that all parties practicing before it know and comply with the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court for the Eastern District of Tennessee.

Notwithstanding the SBA's argument that Rule 7001(8) only applies to § 510(c), the plain language of the Rule does not limit application only to subsection (c). The only exception stated in Rule 7001(8) is when a plan provision provides for subordination. *See, e.g., McGimsey*

¹ Ms. Young argues that creditors may not object to other creditors' claims, but in this case, that is not a valid argument. There is a split of authority, with one side holding that so long as the creditor has a pecuniary interest, it may file an objection, *see, e.g., In re C.P. Hall Co.*, 513 B.R. 540, 543 (Bankr. N.D. Ill. 2014) ("A creditor's interest in a bankruptcy case is pecuniary, and so a creditor is a 'party in interest' with standing to object to the claims of other creditors."), and the other side holding that "[t]ypically, 'where a trustee is appointed to administer an estate, a creditor can object to a claim of another creditor only, if upon demand, the trustee refuses to do so and the court grants the creditor the right to act on behalf of the trustee.'" *Haugen v. Multibank 2009-1 CRE Venture, LLC (In re LaPrade's Marina, LLC)*, 566 B.R. 84, 86 n.2 (Bankr. N.D. Ga. 2017) (quoting *Trauner v. Huffman (In re Trusted Net Media Holdings, LLC)*, 334 B.R. 470, 476 (Bankr. N.D. Ga. 2005)). In this case, however, the Chapter 7 Trustee has not filed and clearly does not intend to file an objection to the claim. *See Merhav Ampal Group, Ltd. v. Merhav (M.N.F.) Ltd. (In re Ampal-American Israel Corp.)*, 545 B.R. 802, 808-09 (Bankr. S.D.N.Y. 2016) (holding that defendant creditors were authorized to object pursuant to § 502(a) as parties in interest in a case where the chapter 7 trustee did not oppose the efforts to disallow the claim and did not intend to file his own objection). Nevertheless, because the Court has determined that the procedural posture is inappropriate, the SBA's standing is irrelevant for purposes of the objection.

Trust v. USA Capital Diversified Trust Deed Fund, LLC (In re USA Commercial Mortg. Co. USA Capital Realty Advisors, LLC), 377 B.R. 608, 620 n.13 (B.A.P. 9th Cir. 2007) (“By its own terms, Rule 7001(8) does not distinguish between types of subordination. Thus, all types of subordination fall under this rule.”). Accordingly, under the plain language of Rule 7001(8), an adversary proceeding is required to determine whether, pursuant to any subsection of § 510, Ms. Young’s claim is subordinated to that of the SBA.

The SBA also argues that even if Rule 7001(8) includes § 510(a), “that requirement is not absolute” because there is no prejudice to Debtor, all parties to the Objection to Claim are on notice, and Ms. Young waived a full evidentiary hearing on the matter, electing to have the issue decided on the briefs. [Doc. 64 at 3, 4.] Thus, the government argues, “there is no need to place form over substance and require further delay for the commencement of an adversary proceeding.” [*Id.* at 4-5.]

As previously stated, this Court has a longstanding commitment to application and enforcement of the procedural rules governing it because they provide consistency and predictability for all parties. On a number of occasions, this Court has denied relief sought based on a failure of the parties to comply with the rules. In this practice, the Court is not alone. As stated quite clearly by the Bankruptcy Court for the Northern District of Indiana and fully endorsed by this Court,

[w]hen the procedural rules require that particular relief be sought through an adversary proceeding, the opposing party has the right to expect that they will be followed. Furthermore, the court has an obligation to police the line which separates adversary proceedings from contested matters. Consequently, unless it has the consent of all concerned, the court should not award relief using the procedures that apply to contested matters when the rules of procedure require an adversary proceeding.

The court acknowledges the equity of the result the trustees and the United States Trustee seek. The court also realizes that motions to determine secured status and

adversary proceedings may be more cumbersome and inefficient than the path they ask the court to follow. That, however, is the path the Bankruptcy Code and the rules of procedure prescribe. Ignoring the requirements of both the law and the applicable rules of procedure in a rush to do equity will rarely achieve an equitable result. Quite to the contrary, if the courts are not willing to observe the requirements of the law and the applicable rules of procedure, how can we hope that anyone else will ever do so? To knowingly disregard those requirements will encourage litigants to cut corners and help to spawn a legal culture that not only wants to cut corners but then wants to cut ever larger and larger corners, resulting in a progressive deterioration which, if left unchecked, can only lead to chaos. Admittedly, the future of civilization as we know it does not depend upon what this court does with the trustees' objections to the claims presently before it. Nonetheless, when the Bankruptcy Code and the applicable rules of procedure already provide an answer to a particular problem, the court should not disregard that solution and use its equitable powers to create alternative remedies.

In re Taylor, 289 B.R. 379, 388-89 (Bankr. N.D. Ind. 2003) (citations omitted).

The rules applicable to the SBA's request to subordinate Ms. Young's claim to its own could not be clearer. Rule 3007(b) provides that "[a] party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding." Fed. R. Bankr. P. 3007(b). Rule 7001(8) expressly requires an adversary proceeding to subordinate any allowed claim or interest, except when a . . . plan provides for subordination." Fed. R. Bankr. P. 7001(8); *see also In re Palmdale Hills Prop., LLC*, No. 8:08-17588ES, 2011 WL 2341298, at *3 (Bankr. C.D. Cal. June 13, 2011) ("Pursuant to Fed. R. Bankr. P. 7001(8), subordination can only be pursued through an adversary proceeding and Rule 3007(b) bars the inclusion of this relief in a claim objection."); *In re Donson*, 434 B.R. 471, 474 (Bankr. S.D. Tex. 2010) (acknowledging that "[r]ecent case law . . . has strictly interpreted the interaction between Bankruptcy Rules 3007(b) and 7001"); *In re J.S. II, LLC*, 389 B.R. 570, 587-88 (Bankr. N.D. Ill. 2008) (stating that Rule 7001(8) "requires that claims for equitable subordination be pursued via an adversary proceeding" so that "although a technicality," a subordination claim asserted as a third-party claim had to be dismissed); *cf. In re*

Washington Mut., Inc., 462 B.R. 137, 145 (Bankr. D. Del. 2011) (finding that because the Chapter 11 plan provided for a class of subordinated claims, Rule 7001(8) did not require an adversary proceeding to object to those claims).

Having fully considered the procedural issues raised by Ms. Young and because it attempts to subordinate Ms. Young's claim improperly through a contested matter, the Objection to Claim filed by the SBA on December 5, 2017 [Doc. 38] is OVERRULED.

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